

James H. Lister, ABA #1611111
Brian V. Gerd, ABA #1810097
David K. Gross, ABA # 9611065
Birch Horton Bittner & Cherot
1150 Connecticut Avenue, NW, Suite 350
Washington, DC 20036-4142
jlister@bhb.com
bgerd@bhb.com
dgross@bhb.com
Telephone 202.659.5800
Facsimile 202.659-1027

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ALASKA INDUSTRIAL DEVELOPMENT
AND EXPORT AUTHORITY,

Plaintiff,

v.

U.S. DEPARTMENT OF THE INTERIOR,
DEB HAALAND, in her capacity as
Secretary of the Interior, BUREAU OF
LAND MANAGMMENT, and TRACY STONE-
MANNING, in her official capacity as Director of
the Bureau of Land Management

Defendants.

Case No. 3:24-cv-00051-SLG

RESPONSE TO DEFENDANTS' STATUS REPORT

Plaintiff Alaska Industrial Development & Export Authority ("AIDEA") respectfully submits this Response to the Status Report that Defendant U.S. Department of Interior ("DOI") submitted on January 8, 2025 (DE 90).

In the Status Report, DOI informs the Court that there were no bidders in the second ANWR oil and gas lease sale, in which bids were due on January 6, 2025. DOI then refers the Court to a January 8, 2025 press release from DOI. There, DOI Acting Deputy Secretary Daniel-Davis, who took part in DOI's decision to cancel AIDEA leases,

attributes the lack of bidding to a recognition by the oil and gas industry that ANWR is too environmentally sensitive to allow oil drilling to occur. She says the 2017 Tax Act, Pub Law No. 115-97 § 20001(c), requiring DOI to hold the first and second ANWR lease sales, was based on “false promises.”¹

DOI is mistaken. No one bid in the second ANWR oil and gas sale because DOI rewrote the operational rules so restrictively that no one could viably bid. In its December 8, 2024 Record of Decision, DOI imposed “no surface occupancy” restrictions covering the majority of the 400,000 acres it offered for leasing, as well as a host of other new restrictions that sank the economic viability of the program.² DOI acknowledged in the Final SEIS for its December, 2024 ROD that its restrictions might make the statutorily-mandated oil and gas drilling program non-viable.³ AIDEA and the State have filed actions in this Court for judicial review of the new restrictions in the December 2024 ROD.⁴

AIDEA stands ready and willing to conduct lawful, environmentally-appropriate oil and gas activities if the Court overturns DOI’s unlawful cancellation of the leases that DOI issued AIDEA in January 2021 in the first lease sale, to fulfill the mandate of the Tax Act.

¹ DOI Status Report. DE 90 (linking to <https://www.doi.gov/pressreleases/arctic-refuge-leasesale-yields-no-interest>.)

² December, 2024 ROD, p. 5 and Map 2. *See* DOI Status Report in Case No. 3:20-cv-00204-SLG (DE 110) (noting posting of December, 2024 ROD at the project NEPA website: <https://eplanning.blm.gov/eplanning-ui/project/2015144/510>)

³ Final SEIS, November, 2024, p. ES 3-51 (“these limitations could ... reduce oil production, *or even prevent development.*”) (emphasis added); DOI Status Report in Case No. 3:20-cv-00204-SLG (DE 108) (Final SEIS posted at project website noted above).

⁴ Complaint, AIDEA v. Bureau of Land Management, Case No. 3:24-cv-00282-SLG (District of Alaska, filed Dec. 20, 2024); Complaint, State of Alaska v. U.S. Dept. of Interior, Case No. 3:25-cv-0003-SLG (Complaint, filed Jan 6., 2025).

AIDEA respectfully requests that DOI's Status Report and this Response to Status Report be added to the summary judgment briefing record, in light of their relationship to the existing summary judgment briefing. It is helpful to compare Assistant Secretary Daniel-Davis's statement in the DOI January 8, 2025 press release, which reviewed the implementation of the ANWR oil and gas program back to its inception, with earlier statements by DOI officials or soon-to-be DOI officials regarding the ANWR oil and gas program and AIDEA's leases, which are addressed in the summary judgment briefing.⁵ These statements show a consistent theme over the last four years – that DOI's senior officials administering the ANWR oil and gas program viewed setbacks to the congressionally-mandated ANWR oil and gas program as being desirable events:

Soon-to-be BLM Director Stone Manning – December 15, 2020: “The Arctic Refuge was set aside for the purposes of protecting wilderness, recreational values, and wildlife habitat... BLM's plan to allow oil and gas leasing, seismic exploration, and other oil and gas activities in the Refuge undermines and is inconsistent with these important and unique values.”⁶

Secretary Haaland – September 6, 2023: “With today's action [cancelling AIDEA's leases from the first ANWR oil and gas sale] no one will have rights to drill oil in one of the most sensitive landscapes on Earth.”⁷

Assistant Secretary Davis-Daniels -- January 9, 2025: “The lack of interest from oil companies in development in the Arctic National Wildlife Refuge reflects what

⁵ See AIDEA Count II(b) summary judgment brief, DE 69-1 at 4-10

⁶ December 15, 2020 Declaration of Tracy Stone-Manning of National Wildlife Federation, before becoming BLM Director, in related case 3:20-cv-00204-SLG (filed as DE 68-6 in the present case, with the motion to supplement the record, DE 68).

⁷ September 6, 2023 Statement of Secretary Haaland announcing the cancellation of AIDEA's leases on September 6, 2023. See DE 48 at 2, n. 1 (quotation and stipulation to admissibility).

we and they have known all along – there are some places too special and sacred to put at risk with oil and gas drilling. This proposal was misguided in 2017, and it misguided now. The BLM has followed the law and held two lease sales that have exposed the false promises made in the [2017] Tax Act.”⁸

Given these views expressed by senior officials regarding the Tax Act and its statutorily-mandated oil and gas drilling program, it is unsurprising that DOI: (1) cancelled AIDEA’s leases based on a *Draft* SEIS, without first allowing AIDEA to comment on the Draft SEIS or providing AIDEA with notice of some other opportunity to defend the lawfulness of its leases, (2) undid DOI’s prior compliance with the Tax Act’s directive to hold a lease sale by December 2021 through unilaterally cancelling the last remaining leases issued in that lease sale, and (3) arbitrarily rejected available alternatives short of lease cancellation, such as making reasonable going-forward changes to program rules, that would not have so undone DOI’s prior compliance with its Tax Act duties.⁹ Evidence that senior agency officials opposed the achievement of a statutory program’s objectives, to the point of celebrating non-achievement of those objectives, is probative of whether the agency complied with the law and respected AIDEA’s rights in administering that program.

⁸ January 8, 2025 Statement of Acting Deputy Secretary Daniel-Davis (linked to in DOI Status Report, DE 90), see n. 1 above.

⁹ See AIDEA Counts I, II(a), II, IV, and V summary judgment brief, DE 50 at 13-27. (covering each of these issues).

DATED this 15th day of January 2025.

BIRCH HORTON BITTNER & CHEROT
Attorneys for Plaintiff

By: /s/ James H. Lister
James H. Lister, ABA #1611111
Brian V. Gerd, ABA #1810097
David K. Gross, ABA # 9611065

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of January, 2025, a true and correct copy of the foregoing was served on the following in the manner indicated:

CounselOfRecord

☐ U.S. Mail
☐ Facsimile
☒ Electronic Delivery
☐ Hand Delivery

BIRCH HORTON BITTNER & CHEROT

By: /s/ James H. Lister